

filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) *Other nullifications.* The OCC may nullify any decision on a filing that is:

- (i) Contrary to law, regulation, or OCC policy thereunder; or
- (ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

Subpart B—Initial Activities

§ 5.20 Organizing a bank.

(a) *Authority.* 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, and 2903.

(b) *Licensing requirements.* Any person desiring to establish a national bank shall submit an application and obtain prior OCC approval.

(c) *Scope.* This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank, including a national bank with a special purpose. Information regarding an application to establish an interim national bank solely to facilitate a business combination is set forth in § 5.33.

(d) *Definitions.* For purposes of this section:

(1) *Bankers' bank* means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) *Control* means control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2).

(3) *Final approval* means the OCC action issuing a charter certificate and

authorizing a national bank to open for business.

(4) *Holding company* means any company that controls or proposes to control a national bank whether or not the company is a bank holding company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1).

(5) *Lead depository institution* means the largest depository institution controlled by a bank holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) *Organizing group* means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank charter.

(7) *Preliminary approval* means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank. A preliminary approval generally is subject to certain conditions that an applicant must satisfy before the OCC will grant final approval.

(e) *Statutory requirements*—(1) *General.* The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 *et seq.* The name of a proposed bank must include the word “national.” In determining whether to approve an application to establish a national bank, the OCC verifies that the proposed national bank has complied with the following requirements of the National Bank Act. A national bank shall:

- (i) Draft and file articles of association with the OCC;
- (ii) Draft and file an organization certificate containing specified information with the OCC;
- (iii) Ensure that all capital stock is paid in; and
- (iv) Have at least five elected directors.

(2) *Community Reinvestment Act.* Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's description of how it will meet its CRA objectives.

(f) *Policy*—(1) *General*. The marketplace is normally the best regulator of economic activity, and competition within the marketplace promotes efficiency and better customer service. Accordingly, it is the OCC's policy to approve proposals to establish national banks, including minority-owned institutions, that have a reasonable chance of success and that will be operated in a safe and sound manner. It is not the OCC's policy to ensure that a proposal to establish a national bank is without risk to the organizers or to protect existing institutions from healthy competition from a new national bank.

(2) *Policy considerations*. (i) In evaluating an application to establish a national bank, the OCC considers whether the proposed bank:

(A) Has organizers who are familiar with national banking laws and regulations;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability; and

(E) Will be operated in a safe and sound manner.

(ii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act and the National Bank Act.

(3) *OCC evaluation*. The OCC evaluates a proposed national bank's organizing group and its operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) *Organizing group*—(1) *General*. Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the

proposed national bank's affairs in a safe and sound manner. The bank's initial board of directors generally is comprised of many, if not all, of the organizers. The operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market to be served. Each organizer should be knowledgeable about the operating plan. A poor operating plan reflects adversely on the organizing group's ability, and the OCC generally denies applications with poor operating plans.

(2) *Management selection*. The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of an operating plan that is accurate, complete, and appropriate for the type of bank proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the bank commences business.

(3) *Financial resources*. (i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank. However, directors' stock purchases, individually and in the aggregate, should reflect a financial commitment to the success of the national bank that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on bank dividends, fees, or other compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for a bank not affiliated with a holding company, it is desirable that an organizer who is also proposed as a director of the national bank be able to supply or have a realistic plan to enable the bank to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insider and the proposed national bank must be on nonpreferential terms.

(4) *Organizational expenses.* (i) Organizers are expected to contribute time and expertise to the organization of the bank. Organizers should not bill excessive charges to the bank for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank shall not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or withdrawal of preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) *Sponsor's experience and support.* A sponsor must be financially able to support the new bank's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

- (i) An existing holding company;
- (ii) Individuals currently affiliated with other depository institutions; or
- (iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) *Operating plan—(1) General.* (i) Organizers of a proposed national bank shall submit an operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2) of this section. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by them-

selves to result in denial. The OCC considers inadequacies in an operating plan to reflect negatively on the organizing group's ability to operate a successful bank.

(2) *Earnings prospects.* The organizing group shall submit *pro forma* balance sheets and income statements as part of the operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the operating plan.

(3) *Management.* (i) The organizing group shall include in the operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the bank commences business.

(4) *Capital.* A proposed bank must have sufficient initial capital, net of any organizational expenses that will be charged to the bank's capital after it begins operations, to support the bank's projected volume and type of business.

(5) *Community service.* (i) The operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group shall evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The operating plan must demonstrate how the proposed bank responds to those needs consistent with the safe and sound operation of the bank. The provisions of this paragraph may not apply to an application to organize a bank for a special purpose.

(ii) As part of its operating plan, the organizing group shall submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a bank, the organizing group shall include plans for attracting and maintaining community support.

(6) *Safety and soundness.* The operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, national banking laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) *Fiduciary services.* The operating plan must indicate if the proposed bank intends to offer fiduciary services. The information required by § 5.26 shall be filed with the charter application. A separate application is not required.

(i) *Procedures—(1) Prefiling meeting.* The OCC normally requires a prefiling meeting with the organizers of a proposed national bank before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Manual before the prefiling meeting. The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the applicant.

(2) *Operating plan.* An organizing group shall file an operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) *Spokesperson.* The organizing group shall designate a spokesperson to represent the organizing group in all contacts with the OCC. The spokesperson shall be an organizer and proposed director of the new bank, except a representative of the sponsor or sponsors may serve as spokesperson if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(4) *Decision notification.* The OCC notifies the spokesperson and other interested persons in writing of its decision on an application.

(5) *Post-decision activities.* (i) Before the OCC grants final approval, a proposed national bank must be established as a legal entity. A national bank becomes a legal entity after it

has filed its organization certificate and articles of association with the OCC as required by law. In addition, the organizing group shall elect a board of directors. The proposed bank may not conduct the business of banking until the OCC grants final approval.

(ii) For all capital obtained through a public offering a proposed national bank shall use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16.

(iii) A national bank in organization shall raise its capital before it commences business. Preliminary approval expires if a national bank in organization does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Approval expires if the national bank does not commence business within 18 months from the date the OCC grants preliminary approval.

(j) *Expedited review.* An application to establish a full-service national bank that is sponsored by a bank holding company whose lead depository institution is an eligible bank or eligible depository institution is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the applicant prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) *National bankers' banks—(1) Activities and customers.* In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group shall list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) *Waiver of requirements.* At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those

requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) *Investments.* A national bank may invest up to ten percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) *Special purpose banks.* An applicant for a national bank charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. In addition to the other requirements in this section, a bank limited to fiduciary activities, credit card operations, or another special purpose may not conduct that business until the OCC grants final approval for the bank to commence operations. A national bank that seeks to invest in a bank with a community development focus must comply with applicable requirements of 12 CFR part 24.

§ 5.24 Conversion.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) or a Federal savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter. A national bank shall give notice to the OCC before converting to a state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) or Federal savings association.

(c) *Scope.* This section describes procedures and standards governing OCC review and approval of an application by a state bank or Federal savings association to convert to a national bank charter. This section also describes notice procedures for a national bank seeking to convert to a state bank or Federal savings association.

(d) *Conversion of a state bank or Federal savings association to a national bank—(1) Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. The OCC may deny an application by any state bank (including a "state bank" as defined in 12 U.S.C. 214(a)) and any Federal savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulator.

(2) *Procedures.* (i) *Prefiling communications.* The applicant should consult with the appropriate district office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the district office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) A state bank (including a state bank as defined in 12 U.S.C. 214(a)) or Federal savings association shall submit its application to convert to a national bank to the appropriate district office. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting bank expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);